

REMARKS

This paper is filed in response to the Office Action issued for the instant application on December 22, 2005. Claims 1 and 12-17 are pending in the instant application. Claims 1 and 12-17 stand rejected.

In the Office Action, the Examiner rejected claims 1, 12 and 13 under 35 U.S.C. 101, as claiming the same invention as that of claims 1, 12 and 13 of prior U.S. Patent No. 6,632,788.

In response to this rejection, the Applicants have canceled claims 1, 12 and 13 of the instant application. Accordingly, the Applicants respectfully request the above-mentioned rejection under 35 U.S.C. 101 be withdrawn.

In the Office Action, the Examiner rejected claims 14 and 15 on the ground of non-statutory obviousness-type double patenting, as being unpatentable over claims 9, 14 and 15 of prior U.S. Patent No. 6,632,788. The Examiner states that although the conflicting claims are not identical, they are not patentably distinct from each other.

As indicated in the Office Action by the Examiner, a timely filed Terminal Disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on nonstatutory double patenting ground provided the conflicting application is shown to be commonly owned with the instant application. Accordingly, the Applicants hereby enclose a Terminal Disclaimer form signed by the attorney of record in the instant application, disclaiming a terminal part of the statutory term of a patent granted on the instant application, which would extend beyond the expiration date of the full statutory term of the U.S. Patent No. 6,632,788. The Applicants also submit Statements Under 37 C.F.R. 3.37(b) indicating the ownership of the instant application and the U.S. Patent No. 6,632,788. Accordingly, the Applicants respectfully request the above non-statutory obviousness-type double patenting rejection be withdrawn.

In the Office Action, the Examiner rejected claims 16 and 17 under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter of the invention. The Examiner states that claims 16 and 17 are rejected as being incomplete for omitting essential steps, such omission amounting to a gap between the steps. The Examiner

further states that the omitted steps are: any further steps such as those detailed in the Specification, Example 10, as how to make the recited compound (i.e. distillation, nitropropane, extraction, etc.).

In response to this rejection, the Applicants have amended claim 16 to recite all steps necessary for preparation of the claimed compound. These steps are described in Example 3, on page 11 of the Specification. Example 10, mentioned in the Office Action by the Examiner, describes preparation of the compound different from the compound claimed in claim 16. As described in the Example 3, nitropropane was not used in preparation of the claimed compound. The above arguments also apply to the similarly rejected claim 17. Accordingly, the Applicants respectfully request the above rejection of claims 16 and 17 under 35 U.S.C. 112, second paragraph, be withdrawn.

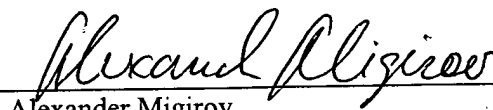
The Commissioner is authorized to charge the Terminal Disclaimer fee and any other fee occasioned by this paper to the Deposit Account no. 12-1295.

In view of the amendments made herein, the Applicants believe that the instant application is in condition for allowance. Early and favorable consideration of the present application is respectfully requested.

Respectfully submitted,

INTERNATIONAL FLAVORS & FRAGRANCES INC.

By:



Alexander Migirov

Patent Agent

Registration No. 53,326

INTERNATIONAL FLAVORS & FRAGRANCES INC.

521 West 57th Street

Law Department - 10th Floor

New York, New York 10019

Telephone No.: (212) 708-7163

Fax No.: (212) 708-7253

Email: alexander.migirov@iff.com

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